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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/030,685	02/20/2003	Munekazu Ogawa	217930USOPCT	8398
22850	7590	01/22/2004	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			LEVY, NEIL S	
		ART UNIT		PAPER NUMBER
		1616		

DATE MAILED: 01/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/030,685	OGAWA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Neil Levy	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)  Responsive to communication(s) filed on 5/21/03.

2a)  This action is FINAL. 2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)  Claim(s) 1-4 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_ is/are allowed.

6)  Claim(s) 1-4 is/are rejected.

7)  Claim(s) \_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some \* c)  None of:

1.  Certified copies of the priority documents have been received.

2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_.

3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a)  The translation of the foreign language provisional application has been received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ .	6) <input type="checkbox"/> Other: ____ .

Please indicate 371 status, if this is desired, after title on page 1 of specification.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 are rejected under 35 U.S.C. 103(b) as being unpatentable over Komyoji et al-JP 0301103 and Nasu et al 4995898 in view of Chazalet et al WO 99/27788 (教导) of Masamiro-JP 04154704.

Komyoji : See abstract, the instant formula ( I ), effective as insecticide, microbiocide, nematocide to control phytophthora, when applied to infected crops.

Nasu-also, the instant compound, or similar Imidazole (table 2-cpd. 15) are effective with add fungicides, of the general forms of the instant fungicides (col.46, lines 14-24) both apply to crops, to protect against pests. However, specific instant fungicides were not identified). Chazalet shows them in synergistic combination (p.5 and 11) of compound I and II H, to control phytophthora and other pests (p.10).

Masamiro also shows the imidizaloe of Nasu as combinable with other fungicides (see II b, p.2) analogs of the instant thiazolecarboxamides (p.2, 1 a-d) also effective against phytophthora (p.2).

The selection of each ingredient and form thereof is a result effective parameter chosen to obtain the desired effects. It would be obvious to vary the nature of each ingredient to optimize the effects desired.

Applicant has not provided any objective evidence of criticality, non-obvious or unexpected results that the administration of the particular ingredients' or concentrations provides any greater or different level of prior art expectation as claimed, and the use of ingredient for the functionality for which they are known to be used is not basis for patentability.

It would be obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize pesticides in combination for control of multiple organisms, to use Komyoji pesticidal agent with known fungicides, as Nasu shows them combinable, the motivation to control multiple pests and Chazalet particularizes the combination of the instant and shows acceptable ratio range and amounts to use.

Claims 1-4 are rejected under 35 U.S.C. 102(a) as being anticipated by Chazalet et al-WO 99/27788.

See compound I, p. 2, and II H (p.3) in combination, at the instant ratio (p.4, 5) and, in methods to control pests, at the instant dosage (p.11).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 571-272-0602. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 and (703) 872-9307.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy/tgd

January 15, 2004



NEIL S. LEVY  
PRIMARY EXAMINER